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April 20, 2023

**BY ECF AND EMAIL**

Hon. Katherine Polk Failla  
United State District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 618  
New York, New York 10007  
Failla\_NYSDChambers@nysd.uscourts.gov

**MEMO ENDORSED**

**Re: *Walmart Inc., et. al. v. Capital One, N. A.*,  
Case No. 23-cv-02942-KPF**

Dear Judge Failla:

We represent Plaintiffs in the above-mentioned matter (collectively, “Walmart”), and write pursuant to Rule 9(B)(i) of the Court’s Individual Rules of Practice to respectfully request permission to redact portions of Walmart’s letter requesting a pre-motion conference on its anticipated motion for summary judgment.

As the Court may be aware, this case concerns a single claim for declaratory judgment as to whether Walmart was entitled to terminate a contract with the defendant, Capital One. The contract at issue and discussed in the pre-motion letter contains a broad confidentiality provision that prohibits the parties from disclosing the terms of the contract. We contacted counsel for Capital One to obtain its position regarding whether the references to the contract in the pre-motion letter may be filed on the public docket, and Capital One has indicated that it has not yet formulated a position on sealing. We therefore respectfully request the Court provisionally permit the filing of the unredacted letter under seal until such a time as Capital One can either make an application for permanent sealing or confirm whether it objects to the letter being filed on the docket without redaction.

Respectfully,

/s/ Matthew L. Schwartz  
Matthew L. Schwartz  
Jesse Panuccio (*pro hac vice*)

The Court is in receipt of Plaintiffs' letter requesting a conference to discuss its anticipated motion for summary judgment (Dkt. #33, 34) as well as the above request to file that letter under seal. Because Defendant does not oppose the sealing request at this time, that request is GRANTED. Defendant may move the Court for the unsealing of the document at a later date if it is so inclined.

Plaintiffs' request for a conference is GRANTED as well. The parties are ORDERED to appear for a conference to discuss Plaintiffs' anticipated motion to dismiss on **May 3, 2023**, at 3:00 p.m. in Courtroom 618 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York.

Defendant shall file a response to Plaintiffs' premotion letter on or before **April 25, 2023**. Defendant's obligation to answer or otherwise respond to the complaint is stayed pending further order of the Court.

The Clerk of Court is directed to terminate the motion at docket entry 32. The Clerk of Court is additionally directed to maintain docket entry 34 under seal, viewable only to the parties and the Court.

Dated: April 20, 2023  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE